

## EDUCATION DEPARTMENT[281]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 102, “Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees,” Iowa Administrative Code.

The proposed amendments are the result of routine Department review of these rules, as well as feedback from “designated investigators,” as that term is defined in these rules. The proposed amendment in Item 1 conforms the definition of “sexual harassment” to the definition in Iowa Code section 280.28. The proposed amendments in Items 2, 3, 6, 7, and 8 avoid use of the word “victim” inasmuch as that term is not in the underlying statute. The amendments in Items 4 and 5 are proposed as a result of actual practice and to make the process more user-friendly for students and their families. The amendments in Item 9 are not substantive and are made to reflect the correct numbering system for the Iowa Administrative Code.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before January 4, 2011, at 4:30 p.m. Comments on the proposed amendments should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail [carol.greta@iowa.gov](mailto:carol.greta@iowa.gov); or fax (515)281-4122.

These amendments are intended to implement Iowa Code section 280.17.

The following amendments are proposed.

ITEM 1. Amend rule **281—102.2(280)**, definition of “Sexual harassment,” as follows:

“*Sexual harassment*” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student’s academic performance by creating an objectively intimidating, hostile, or offensive education environment.

ITEM 2. Amend rule 281—102.3(280), introductory paragraph, as follows:

**281—102.3(280) Jurisdiction.** To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report must include basic information showing that the ~~victim of the alleged abuse~~ student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

ITEM 3. Amend subrule 102.5(2) as follows:

**102.5(2)** Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney’s office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the

area of abuse investigation. The second-level investigator shall not be a school employee, and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions shall include the options of:

- a. Temporary removal of the student from contact with the school employee.
- b. Temporary removal of the school employee from service.
- c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures shall include a statement that the investigators appointed and retained under this chapter shall have access to any educational records of ~~a student who is the named victim of alleged abuse~~, the allegedly abused student and access to the student for purposes of interviewing and investigating the allegation.

ITEM 4. Amend subrule 102.5(3), introductory paragraph, as follows:

**102.5(3)** Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

ITEM 5. Amend subrule 102.6(2), introductory paragraph, as follows:

**102.6(2)** *Content of report.* The report shall be in writing, signed, and, if signed by a minor, witnessed by a person of majority age; and shall contain the following information:

ITEM 6. Amend subrule 102.8(4) as follows:

**102.8(4)** The investigator shall interview the ~~alleged victim, the school employee named in the report, and any collateral sources who may have knowledge of the circumstance contained in the report~~ allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

ITEM 7. Amend subrule 102.9(1) as follows:

**102.9(1)** Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination that jurisdiction exists is made ~~that jurisdiction exists~~, the allegedly victim allegedly abused student has been interviewed, and a determination is made that the investigation will not be deferred under subrule 102.9(5).

ITEM 8. Amend subrule 102.9(3) as follows:

**102.9(3)** The investigator shall notify the parent, guardian, or legal custodian of a child; in prekindergarten through grade six; of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's, guardian's, or legal custodian's place. The investigator shall interview the ~~alleged victim~~ allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

ITEM 9. Amend rule 281—102.11(280) as follows:

**281—102.11(280) Founded reports—designated investigator’s duties.**

**102.11(1)** The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code section 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee’s supervisor and document all action taken.

**102.11(2)** Upon receipt of the level-two investigator’s report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator shall:

1. a. Forward copies of the level-two investigator’s report to the student’s parent or guardian, the school employee named in the complaint, and the school employee’s supervisor; notify the person filing the report, if different from the student’s parent or guardian, of the disposition of the case or current status of the investigation;

2. b. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent’s signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee’s certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

3. c. Arrange for counseling services for the student on request of the student, or the student’s parent or guardian.